

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSE O. ARTEAGA,

Plaintiff,

v.

J. GARCIA, *et al.*,

Defendants.

Case No. 1:22-cv-01292-KES-EPG (PC)

ORDER AUTHORIZING ISSUANCE OF
SUBPOENA *DUCES TECUM* AND SETTING
DEADLINES

AND

ORDER DIRECTING CLERK
TO SEND PLAINTIFF A COPY OF FORM
AO 88B AND FORM USM-285

Plaintiff Jose O. Arteaga is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983.

The Court has screened Plaintiff's complaint and found that the case may proceed on the following cognizable claims: 1) Eighth Amendment claims against defendants J. Garcia and A. Fugate for excessive force and 2) Eighth Amendment failure to protect claim against Defendant John Doe #1. (ECF Nos. 14, 21). On January 23, 2025, the Court issued a service order, ordering service on the three defendants through CDCR's e-service pilot program. (ECF No. 22). Subsequently, defendants Garcia and Fugate filed notice of intent to waive service. (ECF No. 25). However, CDCR was unable to identify defendant John Doe #1 and filed notice of intent not to waive service for that defendant. (ECF Nos. 25, 26). Similarly, U.S. Marshals was unable to serve this defendant. (ECF No. 27).

To proceed against Defendant John Doe #1, Plaintiff must identify and serve this Defendant. Service can only be completed if the Court or the United States Marshal can identify

1 and locate the Defendant. Plaintiff will have an opportunity to seek information to learn John Doe
2 #1's identity. However, it remains Plaintiff's responsibility to identify and serve John Doe #1 and
3 to file a motion to substitute or amend the complaint accordingly.

4 Although Federal Rule of Civil Procedure 26(d)(1) generally provides that "[a] party may
5 not seek discovery from any source before the parties have conferred as required by Rule 26(f)," a
6 party may do so "when authorized . . . by court order." Here, the Court finds good cause to permit
7 Plaintiff to issue a subpoena duces tecum for the limited purpose of discovery identity of
8 Defendants John Doe #1 for the claims that proceed in this case. *See Malibu Media, LLC v. Doe*,
9 319 F.R.D. 299, 305 (E.D. Cal. 2016) (noting that a court may permit, for good cause, early
10 discovery to learn the identities of Doe defendants).

11 Accordingly, the Court will authorize the issuance of a subpoena *duces tecum* to seek
12 documents from the California Department of Corrections and Rehabilitation. The Clerk of Court
13 is directed to send Plaintiff one copy of form AO 88B and one copy of form USM-285, to be
14 completed by Plaintiff. When completing these subpoena forms, Plaintiff should only request
15 documents that may assist him in identifying John Doe #1.

16 On the AO 88B form, in the section that begins with "To: (Name of person to whom this
17 subpoena is directed)," Plaintiff should identify the person or entity he is seeking the documents
18 from. Since Plaintiff is seeking information about an employee at Corcoran State Prison, their
19 employer, Corcoran State Prison, appears to be the logical recipient of the subpoena.

20 In the blank space between the lines starting with "production" and "place," Plaintiff should
21 identify the documents he is seeking that would assist him in identifying and serving the
22 unidentified defendant, such as any documents related to identity of people matching the
23 descriptions of the defendant, or photos, names, and addresses of the officers on duty the day of
24 the alleged incident.

25 The "place" and date and "time of the production" boxes refer to the date on which the
26 documents should be produced to the Plaintiff and the address of where the documents should be
27 sent, such as the place of his incarceration or his residence.

28 Plaintiff should **not** fill out Proof of Service section of the AO 88B form, it will be
completed by the U.S. Marshalls after they serve the subpoena. Similarly, Plaintiff should not fill

1 out the section of the USM-285 form that is marked “Space Below for Use of U.S. Marshal Only
2 – Do Not Write Below this Line.”

3 The “Serve At” Section on the USM-285 form should match “To:” section on the AO 88B
4 form, providing the name and address of the person or entity to whom subpoena is directed, such
5 as Corcoran State Prison.

6 Once Plaintiff has completed and returned forms AO 88B and USM-285, the Court will
7 review the documents and, if they are correctly completed, the Court will direct the United States
8 Marshals Service to serve the subpoena.¹ The Court notes that it may limit Plaintiff’s request for
9 production of documents.

10 Plaintiff has 120 days from the date of service of this order to file a motion to substitute a
11 named defendant in place of John Doe #1. Failure to file a motion to substitute by this deadline
12 may result in the dismissal of the unidentified defendants.

13 Accordingly, **IT IS ORDERED** that:

- 14 1. The Clerk of Court is directed to send Plaintiff one copy of form AO 88B and one
15 copy of form USM-285;
- 16 2. Plaintiff has **thirty days** from the date of service of this order to complete and return
17 forms AO 88B and USM-285; and
- 18 3. Plaintiff has **120 days** from the date of service of this order to file a motion to
19 substitute a named defendant in place of John Doe #1. **Failure to file a motion to**
20 **substitute by this deadline may result in the dismissal of John Doe #1.**

21 IT IS SO ORDERED.

22 Dated: **February 18, 2025**

23 /s/ Eric P. Gray
24 UNITED STATES MAGISTRATE JUDGE

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26
27 ¹ If after being served with the subpoena, the California Department of Corrections and Rehabilitation fails
28 to respond or objects to providing documents, Plaintiff may file a motion to compel. The motion must be
filed with the Court and served on the responding person or entity.